

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2056 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MURADALI ABDUL MAJID

Versus

ABDUL REHMAN AJUBHAI

Appearance:

MR RN SHAH for Petitioner

MR SC SHAH FOR MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/08/98

ORAL JUDGEMENT

This revision has been filed against an order of the lower Court passed under section 41 of the Presidency Small Causes Courts Act, 1982.

The brief facts are that the respondent moved an application under section 41 of the Presidency Small Causes Courts Act, 1982 to recover possession of one room

from the revisionist which was given to him on licence being servant of the respondent engaged in the hotel. The said hotel was run by the respondent in the remaining entire premises. It was averred in the application that the revisionist was in the employment of the respondent on daily wages of Rs.6.50 p.s. besides two free meals a day. He was discharged from the service in May,1979. Thus, in effect pleading that the revisionist was a licensee proceedings were drawn under section 41 of the Act. It was also mentioned that the revisionist filed one HRP Suit No.2139 of 1979 for declaration and injunction that he may not be dispossessed by force and except in accordance with law. The injunction application was dismissed on the assurance of the respondent that he would not forcibly dispossess the revisionist. An appeal and consequent revision were also dismissed. Thereafter, the said suit was got withdrawn unconditionally.

The application was resisted by the revisionist on the ground that he was not licensee but was a tenant in a room from the respondent on monthly rent of Rs.15/inclusive of municipal tax but electrical charges were included in this amount. The HRP Suit No.2139 of 1979 was withdrawn on the undertaking of the respondent that the revisionist would not be ousted unlawfully. It was also pleaded that rent receipts were not issued to the revisionist though the revisionist was paying rent to the respondent.

The Court below after examining the material on record found that the revisionist was a mere licensee and not the tenant. Consequently direction was given for his dispossession.

I have heard learned Counsel for the revisionist Shri R.N.Shah at length and gone through the order under revision. It was no doubt a summary proceedings under section 41 of the Act and in such summary proceedings the evidence was properly assessed by the Court below and finding of licence was returned on the basis of material available on record. The said finding does not require any interference in this revision.

Learned Counsel for the revisionist contended that if it is a case of licence then the landlord had remedy to institute a suit for eviction of the licensee under section 28 of the Bombay Rent Act,1947. Likewise the revisionist has also a right to institute a suit for declaration that he is tenant and not licensee. However, no opinion is required to be expressed on these two

contentions. Whatever legal remedy is available to the parties under the Bombay Rent Act, they can avail of the same without any permission from this Court in this revision.

Since the finding of the Court below does not require any interference in this revision, the revision has to be dismissed. Learned Counsel for the revisionist however requested for time to vacate the premises. In the circumstances of the case nine months time will be sufficient to enable the revisionist to obtain suitable accommodation for himself and hand over vacant possession of the disputed premises to the respondent.

In view of the above observation the revision is dismissed. The revisionist shall bear his own cost. He is given nine months time from today to vacate the disputed premises and hand over possession of the same to the respondent.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt